

7th February, 1958

Judge:—

The Hon. Mr. Justice W. Harding, K.M., B.Litt., LL.D.
The Police
versus

Peter William Clarke et.

**Assault and Resistance to the Police — Intoxication —
Art. 95 of the Criminal Laws**

With regard to the plea of intoxication, it is true that, where a specific intent is essential to constitute a crime, evidence of drunkenness rendering the accused incapable of forming that intent should be taken into consideration, together with the other facts proved, in order to determine whether or not such intent existed; however, it has long been an accepted principle that, evidence of drunkenness falling short of this, and merely establishing that the mind of the accused was affected by drink, so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

If a charge of assault and resistance with violence to the Police, is brought up against three persons, and one of them is not sufficiently shown by evidence to have been acting with the other two in pursuance of a common purpose, he cannot be held guilty of this crime. His acts may amount to the contravention of obstruction of the Police in the exercise of their lawful duty, but not to the crime of assault and resistance to the Police.

And since the charge of assault and resistance to the Police is excluded as regards this third accused, the crime of assault and resistance rests to have been committed by two accused only; wherefor it is subject to penalty without the aggravation set forth in the case such crime is committed by three or more persons.

By its judgment of the 18th. of December, 1957, the Criminal Court of Magistrates for the Island of Malta

found the three defendants Clarke, Moyse and Abbot, guilty of having resisted and assaulted Police Constable Pace, a person lawfully charged with a public duty, whilst acting in the execution of the law, the assault being aggravated by the circumstance that it was committed by more than two persons. Defendant Moyse was also found guilty of having caused an injury of a slight nature on the person of Anthony Borg. The defendant Abbot was sentenced to the punishment of hard labour for a period of seven months; the defendant Moyse to the punishment of hard labour for a period of seven months and twenty days; and Clarke, a relapser, to the punishment of hard labour for a period of eighteen months;

The three defendants have now entered an appeal against their conviction and sentence;

This Appellate Court, after hearing the submissions of counsel for the appellants and counsel for the Prosecution, considers as follows;

With regard to the charge against Moyse, of having caused an injury of a slight nature to Anthony Borg, the latter stated, during the course of the proceedings before this Court, that he waived his complaint in respect of that charge. This waiver, which was accepted by the defendant Moyse through his counsel, terminates the proceedings in so far as that charge is concerned (see ss. 235 (1) and (4) and 539 Chapter 12 Revised Edition);

With regard to the plea of intoxication, which the defence has set up on behalf of defendants Moyse and Abbot, it is true that where a specific intent is essential to constitute a crime, evidence of drunkenness rendering the accused incapable of forming that intent should be taken into consideration together with the other facts proved, in order to determine whether or not such intent existed. It has long been an accepted principle, however, that evidence of drunkenness falling short of this, and merely establishing that the mind of the accused was affected by drink, so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural

consequences of his acts (see, as far as English case-law is concerned, Director of Public Prosecutions v. Beard (1920) A.C. 479; and Court of Criminal Appeal, Regina v. Mc Carthy, April 12, 1954, per Lord Goddard C.J. and Hallet and Pearson JJ., in which latter case the principle laid down in Beard's case is quoted with approval; and see, with regard to Maltese case-law, "Rex vs. Martin Cunningham, 21st. December, 1942, where the aforesaid principle was adopted by the Court composed of the Chief Justice and two other Judges);

Now, in this particular case, this Court, on a careful examination of the evidence and of the whole circumstances of the case, agrees with the trial Magistrate that the evidence of drunkenness has fallen far short of convincing the Court that Moyse and Abbot were so drunk as to be incapable of forming the intent requisite to constitute the offence. That plea is, therefore, dismissed;

Passing on to the merits of the charge against the three defendants under section 95(b) of the Criminal Code, that is, that of having assaulted or resisted by violence or active force a person lawfully charged with a public duty when in the execution of the law, aggravated by the circumstance that the assault or resistance was committed by three person, this Court considers;

The evidence shows satisfactorily that after the incident with Anthony Borg, and because of it, Police Constable Pace went in pursuit of the naval ratings, and at a certain point he caught up with the three defendants. Moyse pushed him and went on his way, whereas Clarke and Abbot both assaulted him, and the former gave him a blow which the Police constable tried to parry, and in doing so injured his finger. The two ratings now mentioned were ultimately apprehended with the help of civilians;

With regard to the appellant Moyse, it is difficult to come to the conclusion that he was acting in pursuance of a common purpose with the other two appellants, since he went on his way. Had he stayed on with them, then it

would have been logical to infer that he too was acting in furtherance of the common design of assaulting Police Constable Pace; but the fact that he went on his way reasonably excludes any such inference. The detached act of pushing aside Pace and then running on, does not, in the opinion of this Court, amount to what is sufficient in order to constitute the material ingredient of this offence as it has been authoritatively interpreted in text books (see particularly, in this context, Carrara, at paragraph 2746). The act of Moyse does, however, amount to the contravention of obstruction of Police Constable Pace in the exercise of his lawful duties;

With regard to the appellants Clarke and Abbot, the evidence supports the charge under section 95; but in view of the conclusion reached by this Court with regard to Moyse, the aggravating circumstance envisaged in subsection (b) is no longer applicable, but only subsection (a) falls to be applied. The question as to whether the injury to Police Constable Pace became an injury of grievous nature owing to faulty surgical treatment is not now material, as, in any case, the Court below considered that particular offence of bodily injury as merged in the other offence under section 95;

In view of the foregoing considerations, this Court adjudges and disposes of the appeal as follows;

With regard to Moyse, declares the proceedings against him, in respect of the injury to Borg, terminated, in view of the aforesaid waiver; and declares him not guilty of the offence under section 95, but guilty of the contravention of having obstructed Police Constable Pace in the execution of his lawful duties;

With regard to the appellants Clarke and Abbot, declares them not guilty of the aggravated offence under section 95(b), but of that under section 95(a), that is of assaulting and resisting by violence and active force a person charged with a public duty whilst in the execution of the law;

And sentences the said Moyse to the punishment of detention for the term of ten days; the said Abbot to the punishment of imprisonment with hard labour for a term of four months; the said Clarke, a relapser in crime, to the punishment of imprisonment with hard labour for a term of ten months.
